for their clients (R. 162). The subpoenas were issued pursuant to an order by the Commission (Pet. 4-6) directing an investigation into possible federal securities laws violations in the offer and sale of the unregistered common stock of Newport Pharmaceuticals International, Inc. ("Newport"). This investigation had disclosed that proceeds from the sale of the stock had been deposited in petitioners' accounts (R. 12-14, 17-18).

After petitioners obtained state court orders restraining the banks from complying with the subpoenas, the Commission instituted a proceeding against the banks in the United States District Court for the District of Utah seeking enforcement of the subpoenas (R. 1-4, 10, 21-33). That court (R. 119) permitted petitioners to intervene in the subpoena enforcement proceeding (Fed. R.C.P. Rule 24(b)). The district court, after a hearing, rejected petitioners' objections to the subpoenas (R. 159-165) and enforced them (R-165). On petitioners' appeal, the Court of Appeals for the Tenth Circuit affirmed. The banks upon which the subpoenas were served have not opposed the Commission's application for enforcement.[2]

1. Petitioners contend that the court of appeals "misconstrued and misapplied" *Donaldson* v. *United States*, 400 U. S. 517, so as to "cast * * * considerable doubt on the question of whether or not intervenors * * * had standing to intervene and to

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[2] The district court stayed its enforcement order pending appeal and, subsequent to the decision of the court of appeals, continued the stay pending disposition of the present petition for certiorari.

question the validity of the enforcement proceedings" (Pet. 8).[a] However, petitioners were permitted to intervene and received decisions—albeit adverse—on the merits of their claims from both the district court and the court of appeals.

In the court of appeals petitioners raised two arguments: (1) that the banks' records of the accounts maintained by the lawyer petitioners were privileged communications and (2) that the subpoenas were beyond the scope of the Commission's order of investigation. The court of appeals rejected the privilege claim, finding that the records were the property of the banks, not of petitioners, and reflected no communications made in confidence for the purpose of obtaining legal advice (Pet. 17-18). In its discussion of the second objection, respecting the scope of the Commission's order, the court of appeals, citing *Donaldson*, indicated that since petitioners had neither a property interest in, nor any privilege with respect to, these account records, petitioners probably lacked standing to intervene to object to the scope of the subpoenas (Pet. 19-20).

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[a] Although the two lawyer-petitioners pose also under "Questions Presented for Review" (Pet. 2) the issue whether the attorney-client privilege applies to bank records of a trust account maintained by a lawyer for his clients, the petition does not discuss this issue, and accordingly neither does this Memorandum. As the court of appeals in this case observed in holding the privilege inapplicable to these records, the Courts of Appeals for both the First and the Ninth Circuits have rejected claims of attorney-client privilege in similar situations. *O'Donnell* v. *Sullivan*, 364 F. 2d 43, 44 (C.A. 1), *certiorari denied*, 385 U.S. 969; *Harris* v. *United States*, 413 F. 2d 316, 319-320 (C.A. 9).

The court pointed out, however, that since the district court had not rejected petitioners' objection to the scope of the subpoenas on the ground of standing (*Donaldson* had been decided after the district court's ruling), it likewise would examine this objection on its merits (Pet. 19, 20-21). The court of appeals did not suggest that *Donaldson* would deny petitioners standing to raise the claim that the records were protected by the attorney-client privilege.[4]

2. Petitioners' contention on the merits is that the subpoenas exceeded the scope of the order of investigation because the subpoenas sought information about transactions effected by *petitioners*, whereas the order, in referring to information reported to the Commission by its staff, did not mention transactions by persons other than Newport itself. The order, however, expressly directed an investigation to determine whether Newport "or any other persons" have engaged in illegal transactions (Pet. 6).

Petitioners appear to argue that since the staff report referred to in the order did not mention pos-

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[4] We believe the court of appeals was correct in its view of the impact of *Donaldson* on petitioners' standing to intervene on the basis of a claim that the subpoenas exceeded the scope of the Commission's order. Subpoena enforcement proceedings are summary in nature, *Donaldson* v. *United States*, *supra*, 400 U.S. at 528-530, and require expeditious action, *United States* v. *Davey*, 426 F. 2d 842, 845 (C.A. 2). To permit someone, by way of intervention in such a proceeding, to object to enforcement of a subpoena issued to another person and calling for documents as to which the objector has neither a privilege nor a proprietary interest would, as this Court stated in *Donaldson*, "unwarrantedly cast doubt upon and stultify the * * * [agency's] every investigatory move." 400 U.S. at 531.

sible violations by persons other than Newport, the order could not encompass an investigation of persons other than Newport. This view is contrary to this Court's repeated holdings that administrative agencies need not make a showing of probable cause for believing that a violation has occurred, or establish any other similar basis, to obtain enforcement of their subpoenas.[5] An agency "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not" (*United States* v. *Morton Salt Co.*, 338 U. S. 632, 643). Furthermore, even if the mention of the staff report did somehow operate to limit the investigation to an inquiry into the lawfulness of Newport's own transactions, it does not follow that information concerning transactions by other persons would be irrelevant to such an inquiry. It is often necessary, in order to determine whether a particular person's transactions were unlawful, to obtain information about transactions by other persons.[6]

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[5] *United States* v. *Powell*, 379 U.S. 48, 57; *United States* v. *Morton Salt Co.*, 338 U.S. 632; *Oklahoma Press Corp.* v. *Walling*, 327 U.S. 186; *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507-510. See also *Woolley* v. *Securities and Exchange Commission*, 97 F. 2d 258 (C.A. 9), certiorari denied, 305 U.S. 614; *Consolidated Mines* v. *Securities and Exchange Commission*, 97 F. 2d 704 (C.A. 9).

[6] For example, the determination whether a corporation has violated the registration provisions of the Securities Act in issuing securities may turn on whether persons purchasing the securities from the corporation have engaged in transactions involving resales to the public, thus making inapplicable the exemption from registration for non-public offerings. See Section 4(2) of the Securities Act of 1933, 15 U.S.C. 77d(2).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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